

1 Jacob E. Brooks
1116 W Riverside Ave, Suite 100
2 Spokane WA 99201
509-456-3123
3

4 **THE HONORABLE SALVADOR MENDOZA, JR**

5
6 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE**
7

8 WILLIAM J. WRIGHT, DOC#
807340 a single person,

9 Plaintiff,

10 v.

11 AIRWAY HEIGHTS
12 CORRECTIONS CENTER MSU,
WASHINGTON STATE
13 DEPARTMENT OF
CORRECTIONS, DON
MCINTYRE, health services
14 manager 2, SUPERINTENDENT
JAMES R. KEY,

15 Defendants.
16

NO. 2:20-cv-00436-SMJ

ANSWER AND JURY
DEMAND

17 **I. JURISDICTION**

18 1.1 Admitted.

19 1.2 Admitted.
20
21
22

1.3 Admitted in part, denied in part. Airway Heights Corrections Center is a corrections center operated by the Washington State Department of Corrections.

1.4 Admitted.

1.5 Admitted.

1.6 Admitted.

1.7 Denied.

1.8 This allegation calls for a conclusion of law and, therefore, no answer is required. To the extent an answer is deemed required, Defendant denies the same.

II. FACTS

2.1 Admitted.

2.2 Admitted in part, denied in part. On August 1, 2018, Plaintiff submitted a health services kite requesting surgery for his left foot. Any allegation not specifically admitted is denied.

2.3 Denied.

2.4 Denied. On August 1, 2018, Plaintiff submitted a health services kite requesting surgery for his left foot.

2.5 Denied. On August 2, 2018, medical staff responded “Watch callout for appt.”

2.6 Denied.

2.7 Denied.

1 2.8 Denied.

2 2.9 Denied.

3 2.10 Denied.

4 2.11 Denied.

5 2.12 Denied. The health services kite, dated September 2, 2018 and
6 received by the Heath Services Unit on September 3, 2018, speaks for
7 itself.

8 2.13 Admitted in part, denied in part. The Care Review Committee
9 determined that a referral for “podiatry for evaluation and treatment as
10 indicated” was “not medically necessary at this time. The Plaintiff was
11 provided with stiff sole rockerbottom shoes to alleviate pain. Any
12 allegation not specifically admitted is denied.

13 2.14 Denied.

14 2.15 Denied.

15 2.16 Admitted in part, denied in part. Dr. Babol reviewed the Plaintiff’s
16 medical records and authored a letter outlining her consultation letter on
17 December 17, 2019. Any allegation not specifically admitted is denied.

18 2.17 Denied. Dr. Babol’s letter speaks for itself.

19 2.18 Denied. Dr. Babol’s letter speaks for itself.

20 2.19 Denied. Dr. Babol’s letter speaks for itself.

21 2.20 Denied. Dr. Babol’s letter speaks for itself.

22 2.21 Denied.

1 2.22 Denied.

2 2.23 Denied.

3 2.24 Denied.

4 2.25 Denied.

5 2.26 Denied.

6 2.27 Denied.

7 2.28 Denied.

8 2.29 Denied.

9 **III. FIRST CAUSE OF ACTION**

10 3.1 Defendants re-allege and incorporate the responses to the allegations
11 above.

12 3.19 The allegation calls for a conclusion of law and therefore no answer
13 is required. To the extent any response is deemed necessary, the
14 Defendant denies the allegation.

15 3.20 The allegation calls for a conclusion of law and therefore no answer
16 is required. To the extent any response is deemed necessary, the
17 Defendant denies the allegation.

18 3.21 The allegation calls for a conclusion of law and therefore no answer
19 is required. To the extent any response is deemed necessary, the
20 Defendant denies the allegation.
21
22

1 3.22 The allegation calls for a conclusion of law and therefore no answer
2 is required. To the extent any response is deemed necessary, the
3 Defendant denies the allegation.

4 3.23 The allegation calls for a conclusion of law and therefore no answer
5 is required. To the extent any response is deemed necessary, the
6 Defendant denies the allegation.

7 3.24 The allegation calls for a conclusion of law and therefore no answer
8 is required. To the extent any response is deemed necessary, the
9 Defendant denies the allegation.

10 3.25 The allegation calls for a conclusion of law and therefore no answer
11 is required. To the extent any response is deemed necessary, the
12 Defendant denies the allegation.

13 **IV. SECOND CAUSE OF ACTION**

14 4.1 Defendants re-allege and incorporate the responses to the allegations
15 above.

16 4.19 The allegation calls for a conclusion of law and therefore no answer
17 is required. To the extent any response is deemed necessary, the
18 Defendant denies the allegation.

19 4.20 The allegation calls for a conclusion of law and therefore no answer
20 is required. To the extent any response is deemed necessary, the
21 Defendant denies the allegation.
22

1 4.21 The allegation calls for a conclusion of law and therefore no answer
2 is required. To the extent any response is deemed necessary, the
3 Defendant denies the allegation.

4 4.22 The allegation calls for a conclusion of law and therefore no answer
5 is required. To the extent any response is deemed necessary, the
6 Defendant denies the allegation.

7 4.23 The allegation calls for a conclusion of law and therefore no answer
8 is required. To the extent any response is deemed necessary, the
9 Defendant denies the allegation.

10 4.24 The allegation calls for a conclusion of law and therefore no answer
11 is required. To the extent any response is deemed necessary, the
12 Defendant denies the allegation.

13 4.25 The allegation calls for a conclusion of law and therefore no answer
14 is required. To the extent any response is deemed necessary, the
15 Defendant denies the allegation.

16 4.26 The allegation calls for a conclusion of law and therefore no answer
17 is required. To the extent any response is deemed necessary, the
18 Defendant denies the allegation.

19 4.27 The allegation calls for a conclusion of law and therefore no answer
20 is required. To the extent any response is deemed necessary, the
21 Defendant denies the allegation.
22

1 4.28 The allegation calls for a conclusion of law and therefore no answer
2 is required. To the extent any response is deemed necessary, the
3 Defendant denies the allegation.

4 4.29 The allegation calls for a conclusion of law and therefore no answer
5 is required. To the extent any response is deemed necessary, the
6 Defendant denies the allegation.

7 **V. THIRD CAUSE OF ACTION**

8 5.1 Defendants re-allege and incorporate the responses to the allegations
9 above.

10 5.19 The allegation calls for a conclusion of law and therefore no answer
11 is required. To the extent any response is deemed necessary, the
12 Defendant denies the allegation.

13 5.20 The allegation calls for a conclusion of law and therefore no answer
14 is required. To the extent any response is deemed necessary, the
15 Defendant denies the allegation.

16 5.21 The allegation calls for a conclusion of law and therefore no answer
17 is required. To the extent any response is deemed necessary, the
18 Defendant denies the allegation.

19 5.22 The allegation calls for a conclusion of law and therefore no answer
20 is required. To the extent any response is deemed necessary, the
21 Defendant denies the allegation.
22

1 5.23 The allegation calls for a conclusion of law and therefore no answer
2 is required. To the extent any response is deemed necessary, the
3 Defendant denies the allegation.

4 5.24 The allegation calls for a conclusion of law and therefore no answer
5 is required. To the extent any response is deemed necessary, the
6 Defendant denies the allegation.

7 5.25 The allegation calls for a conclusion of law and therefore no answer
8 is required. To the extent any response is deemed necessary, the
9 Defendant denies the allegation.

10 5.26 The allegation calls for a conclusion of law and therefore no answer
11 is required. To the extent any response is deemed necessary, the
12 Defendant denies the allegation.

13 5.27 The allegation calls for a conclusion of law and therefore no answer
14 is required. To the extent any response is deemed necessary, the
15 Defendant denies the allegation.

16 **VI. FOURTH CAUSE OF ACTION**

17 6.1 Defendants re-allege and incorporate the responses to the allegations
18 above.

19 6.19 The allegation calls for a conclusion of law and therefore no answer
20 is required. To the extent any response is deemed necessary, the
21 Defendant denies the allegation.
22

1 6.20 The allegation calls for a conclusion of law and therefore no answer
2 is required. To the extent any response is deemed necessary, the
3 Defendant denies the allegation.

4 6.21 The allegation calls for a conclusion of law and therefore no answer
5 is required. To the extent any response is deemed necessary, the
6 Defendant denies the allegation.

7 6.22 The allegation calls for a conclusion of law and therefore no answer
8 is required. To the extent any response is deemed necessary, the
9 Defendant denies the allegation.

10 6.23 The allegation calls for a conclusion of law and therefore no answer
11 is required. To the extent any response is deemed necessary, the
12 Defendant denies the allegation.

13 6.24 The allegation calls for a conclusion of law and therefore no answer
14 is required. To the extent any response is deemed necessary, the
15 Defendant denies the allegation.

16 **VII. PRAYER FOR RELIEF**

17 The allegation is a prayer for relief and therefore no answer is required. To
18 the extent any response is deemed necessary, the Defendant denies that the
19 Plaintiff is entitled to any relief whatsoever.

20 **VIII. AFFIRMATIVE DEFENSES**

21 By Way of FURTHER ANSWER and AFFIRMATIVE DEFENSE,
22 Defendant alleges:

1 1. JURISDICTION - that the Court lacks jurisdiction over the subject
2 matter of this action and/or over the state agency sued.

3 2. PLRA/EXHAUSTION OF ADMINISTRATIVE REMEDIES - that
4 Plaintiff failed to exhaust administrative remedies and that this action is barred by
5 the Prison Litigation Reform Act; therefore the action will not lie.

6 3. COMPARATIVE FAULT - that the injuries and damages, if any,
7 claimed by the Plaintiff were proximately caused or contributed to by the fault of
8 Plaintiff as defined by RCW 4.22.015.

9 4. DISCRETIONARY IMMUNITY - that all or some of the actions of
10 the Defendant, State of Washington, herein alleged as negligence, manifest a
11 reasonable exercise of judgment and discretion by authorized public officials made
12 in the exercise of governmental authority entrusted to them by law and are neither
13 tortious nor actionable.

14 5. STATUTE OF LIMITATIONS – that the Plaintiff’s claims are barred
15 by the statute of limitations.

16 6. FAILURE TO STATE A CLAIM - that the Plaintiff failed to state a
17 claim upon which relief may be granted.

18 7. QUALIFIED IMMUNITY/GOOD FAITH - that the Defendant at all
19 times acted in good faith in the performance of its duties and is therefore immune
20 from suit for the matters charged in Plaintiff’s complaint.

21 8. SETOFF - that the Defendant is entitled to an offset from any awards
22 to Plaintiff herein and/or recovery of back monies paid to Plaintiff.

1 9. FAILURE TO MITIGATE DAMAGES – that the Plaintiff has failed
2 to reasonably mitigate any damages that he has incurred.

3 **IX. JURY DEMAND**

4 In the event this case proceeds to trial, defendant demands that this case be
5 tried to a jury.

6 DATED this 2nd day of December, 2020.

7 ROBERT W. FERGUSON
8 Attorney General

9 s/Jacob E. Brooks
10 JACOB E. BROOKS, WSBA No. 48720
11 Assistant Attorney General
12 1116 W. Riverside, Suite 100
13 Spokane, WA 99201-1106
14 509-456-3123
15 Jake.Brooks@atg.wa.gov

CERTIFICATE OF SERVICE

I hereby certify that I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Douglas D. Phelps
Phelps and Associates, P.S.
2903 N. Stout Road
Spokane, WA 99206

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 2nd day of December, 2020, at Spokane, Washington.

ROBERT W. FERGUSON
Attorney General

s/Jacob E. Brooks
JACOB E. BROOKS, WSBA No. 48720
Assistant Attorney General
1116 W. Riverside, Suite 100
Spokane, WA 99201-1106
509-456-3123
Jake.Brooks@atg.wa.gov